Supreme Court of the United States

October Term, 1948

No. 697

IRA S. MASON, ET AL., *Petitioner*

v.

THE TEXAS COMPANY, *Respondent*

Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit and Brief in Support Thereof

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To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioners, Ira S. Mason and Willard M. Carrol, respectfully pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the First Circuit, entered on January 5, 1949, affirming the decree of the District Court of the United States for the District of Massachusetts, entered on February 24, 1948.

JURISDICTION

The judgment of the United States Circuit Court of Appeals affirming the decree of the United States District Court for the District of Massachusetts was rendered on January 5, 1949. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, 28 U. S. C. A. Sec. 347 (a).

OPINIONS BELOW

The opinion of the District Court is reported in 76 F. Supp. 318, and also appears on pages 122 to 132 of the Record. The opinion of the Circuit Court of Appeals is reported in 171 F. (2d) 559, and a copy of that opinion is also appended to this Petition.

SUMMARY STATEMENT OF THE MATTER INVOLVED

Petitioners Ira S. Mason and Willard M. Carrol, licensed deck officers, seek to recover war bonus payments for the period of their internment during the war. Petitioners signed shipping articles of the S. S. CONNECTICUT, respondent's ship, on March 30, 1942, and on the following day departed for Capetown, South Africa. On or about April 23, 1942, the S. S. CONNECTICUT was engaged en route by enemy vessels and sunk. Petitioners were captured and held on enemy vessels until September 22, 1942, then interned on Japanese territory from September 22, until August 15, 1945 (the date of their liberation by the United States Armed Forces).

Petitioners, who were members of the Texas Tanker Officers Association, base their right to war bonus pay-

ments on Article VIII of the collective bargaining agreement, effective August 1, 1941, between respondent, the Texas Company (hereinafter called the Company), and the Texas Tanker Officers Association (hereinafter called the Association). (R. 24, 30-31.) The pertinent provisions of Article VIII of the agreement follow:

• • • •

WAR BONUS

1. Trans-Atlantic

On each Trans-Atlantic voyage on which a vessel enters a port east of 30 degrees West Longitude, a war bonus . . . will be paid to each licensed officer from and including the day when the vessel departs from the last port in the Western Hemisphere. (R. 30)

• • • •

3. General Provisions

• • • •

(c) In event of total loss of the vessel *due to hostilities or warlike operations,* all licensed officers will be furnished transportation to the United States *and paid their full wages and war bonus until and including the day of arrival at such port.*
(R.31) (Italics are petitioners').

Two factors are adduced to defeat petitioners' rights as set forth in this Agreement. The first are the shipping articles signed by petitioners. (R. 172.) These add a written notation to the printed part of the articles saying "a war bonus is payable on this voyage in accordance with U. S. Maratime (*sic*) Commission Decisions." It is admitted that the U. S. Maritime Commission issued no decisions relating to war bonuses. The District Court and the Court of Appeals found that the reference was intended to embrace the Maritime War Emergency Board. (R. 129.) With this finding, petitioners do not presently disagree.

The second factor is certain correspondence exchanged between the Company and the Association prior to the signing of the shipping articles on March 30, 1942. On February 27, 1942, the Association writing "Per John J. Collins, Adviser," addressed Mr. T. E. Buchanan, the General Manager of the Company, suggesting that the parties abide by "the complete Decisions and clarifications that already have been issued by the Maritime War Emergency Board." (R. 174.) A procedure also was suggested for indicating agreement with such future decisions as that Board might render. (R. 175.)

To this letter Buchanan replied on March 3, 1942, stating that the Company was signifying its willingness to abide by the then existing decisions of the Board. (R. 38). Buchanan also included an addendum for signature by the Association which read in part as follows:

"1) Article VIII of the agreement of August 1, 1941 is hereby deleted and stricken from said agreement;
2) In the payment of war bonuses and other benefits to the members of the Association the Company agrees to abide by the decisions heretofore rendered by the Maritime War Emergency Board identified as decisions Nos. 1 to 5 (including Supplement to Decision No. 5), inclusive, and dated December 22, 1941, January 10, 1942, January 20, 1942, January 22, 1942, January 23, 1942, and February 6, 1942, respectively;
3) In the event the Maritime War Emergency Board renders any additional decisions pertaining to war bonuses and other benefits the Company agrees to give consideration to such decisions in determining whether or not its present policy should be modified." (R. 40)

To this Collins briefly replied, acknowledging its receipt, and added: "I will try to see to it that this is signed as soon as possible." This letter is signed simply, "John J. Collins, Adviser." (R. 177). The proposed addendum was

never signed or returned by the Association.[1] (R. 127)

Some time in that same month John J. Collins entered the United States Navy. (R. 127). The only evidence as to the authority of John J. Collins is the finding of the District Court that he "had previously acted for the Union in all of its negotiations with the Texas Company." (R. 127).

The Association was a signatory of the "Statement of Principles" issued on December 19, 1941, on the basis of which the Maritime War Emergency Board was set up. (R. 56). The Company was not such a signatory. (R. 127).

Petitioners have both been compensated by the Company for all payments save a war bonus for the period of their internment. These payments included a war bonus payment from the day of the sinking of the ship until the arrival of petitioners at the Japanese port (R. 105, 106, 107), but do not include any payment of a war bonus for the period of internment. The payments were made pursuant to a statement of liability made by the company and such statements were signed by petitioners but were not signed in the presence of a shipping commissioner pursuant to the provisions of 46 U. S. C. § 644 and 46 U. S. C. § 641 — a requirement necessary to permit such payments to operate as a release or discharge of all claims.

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[1] The applicable decisions of the Maritime War Emergency Board set forth in the proposed addendum are incorporated in the Record: Decision No. 1 (undated) (R. 60); Supplement to Decision No. 1, dated February 6, 1942. (R. 61); Decision No. 2, dated January 10, 1942 (R. 74); Decision No. 2, Revised, dated February 24, 1942 (R. 74); Decision No. 3, dated January 20, 1942 (R. 88); Amendment to Decision No. 3, dated February 6, 1942 (R. 90); Decision No. 4, dated January 22, 1942 (R. 92); Decision No. 5, dated January 22, 1942 (R. 45); and Decision No. 5, Revised, dated February 21, 1942 (R. 49). [So far as can be determined, Decisions No. 1 through 5 have never been published in the Federal Register.]

Decision No. 5, Revised, *supra*, which bears most directly on petitioners' claim, states that in the event of internment: ". . . the shipowner shall assume liability for payment of basic wages and emergency wages . . . from the date of the taking into custody of the personnel for the purposes of internment, or the destruction or abandonment of the vessel, until and including the date . . . [the seaman] . . . arrives at a Continental United States Port." Article 2 (R. 52).

On December 11, 1946, petitioners filed a libel in the United States District Court for the District of Massachusetts to recover the unpaid war bonuses. The District Court held that the shipping articles were ambiguous; that they had to be interpreted in the light of the dealings between Buchanan and Collins; that these dealings as manifested by the unsigned addendum were in effect an agreement modifying the collective labor agreement of August 1, 1941 and established that war bonuses should be limited to those set forth in the Maritime War Emergency Board decisions; and that petitioners had been paid in accordance with these requirements. Unessential to this decision was the conclusion of the District Court that war bonuses were not payable on this particular voyage under Article VIII, Section 3(c) of the Agreement of August 1, 1941. (R. 130).

The Circuit Court of Appeals affirmed the decree below. Its holding rests upon the fact that the dealings between Buchanan and Collins "superseded" the war bonus provisions of the Collective Labor Agreement of August 1, 1941; that under this superseding agreement war bonuses were payable only in accordance with the Maritime War Emergency Board decisions; and that petitioners had been paid in full in accordance with these decisions. The Circuit Court of Appeals also agreed with the District Court that under Article VIII, Section 3(c) of the Agreement of August 1, 1941, war bonuses during internment were not payable under the circumstances of this particular voyage — a holding unnecessary for its final conclusion and, at the most, an alternative ground of decision.

QUESTIONS PRESENTED

Two important questions are believed to be presented by this record. There are also two subsidiary questions whose resolution would not of themselves justify the grant of a writ of certiorari. Unfortunately, one of these subsidiary questions has also been incidentally resolved against petitioners. Admittedly, the resolution of this subsidiary question against petitioners could be regarded as foreclosing the entire case, but it is submitted that a perusal of the decisions below show that their real ground is the resolution against the petitioner of the important questions that justify resort to a petition to this Court for certiorari.

The two important questions are:

1. Can a collective labor agreement be amended in important matters by casual and inconclusive correspondence between the employer and an adviser to the employee's association who has not been shown to have had an authority to act in that capacity for the association?
2. Do the decisions of the Maritime War Emergency Board, even if regarded to be a part of an employment agreement, deprive employees of the right to war bonuses during internment when the employment contract would otherwise so provide?

If we would express these general questions specifically with regard to this record, they break down into the following:

1. Did the Association agree to a specific proposal, contained in an addendum prepared and signed by the Company, to abandon *all* of the bonus provisions of its bargaining agreement, where the addendum was never signed by the Association and returned to the Company, and where the only comment of the Association official was: "I will try to see to it that this is signed as soon as possible."?
2. Is the provision of a collective labor agreement that calls for the payment of war bonuses during intern-

ment so inconsistent with an agreement to abide by the Maritime War Emergency Board decisions relating to war bonuses as to call for abrogation of the former provision?

The subsidiary questions raised by this record are two:

1. Does Article VIII, Section 3(c) of the Agreement of August 1, 1941, require the payment of war bonuses during the period of internment?

2. Have petitioners as a result of signing the so-called "account stated" lost their rights to recover war bonuses otherwise due them?

REASONS WHY CERTIORARI SHOULD BE GRANTED

First: Petitioners realize that an allegedly erroneous interpretation of a contract between two parties could rarely be the ground for granting certiorari. Petitioners also realize that the interpretation of Article VIII, Section 3(c) by the two lower courts, if it was actually the *ratio decidendum* of these decisions, would be a complete bar to their libel. But petitioners submit that that interpretation was merely argumentatively suggested by these two courts and was not the true basis of their decision. Indeed, the suggested interpretation seems so unreal and so unfair that petitioners believe that the lower courts, had they been forced to rely upon that interpretation alone would not have adhered to it. It seems only to have been argumentatively suggested to buttress a decision reached by these two courts on other grounds.

Second: The manner in which a collective labor agreement can be modified by casual and inconclusive action between an employer and an adviser of a union, though necessarily raised in the particularistic circumstances of this case, involves an issue of substantial moment for that

large segment of industry, both in maritime and interstate commerce, that is governed by the decisions of this Court.

Third: The effect of the decisions of the Maritime War Emergency Board upon collective labor agreements which have secured to employees rights in excess of those provided by the above decisions raises a general issue of consequence to employees in the maritime industry, and brings to the attention of this Court for the first time to petitioners' knowledge the legal significance to be attached to the decisions of the Maritime War Emergency Board.

Fourth: The incidental interpretation of the two lower courts of the meaning of Article VIII, Section 3(c), is palpably erroneous and may tend not only to deprive these petitioners of their rights under a significant collective labor agreement but also other petitioners similarly circumstanced. Although technically reconcilable, it appears in substance to be in conflict with the decision of the Ninth Circuit Court of Appeals in *Steeves* v. *American Mail Line, Ltd.*, 154 F. (2d) 24.

BRIEF IN SUPPORT OF REASONS FOR GRANTING THE WRIT

I. Article VIII, Sec. 3(c) of the Collective Bargaining Agreement Gives Petitioners the Right to a War Bonus for the Period of Their Internment.

Section 3(c) of Article VIII reads as follows:

> 3. GENERAL PROVISIONS;
>
> • • • •
>
> (c) In the event of a total loss of the vessel due to hostilities or warlike operations, all licensed officers will be furnished transportation to a United States port and paid their full wages and war bonus until and including the day of arrival at such port. (R. 31.)

In order to determine the extent of the war bonus there provided, reference must be made to Section 1 of Article VIII which reads as follows:

1. TRANS-ATLANTIC:

> On each Trans-Atlantic voyage on which a vessel enters a port east of 30 degrees West Longitude, a war bonus at the rate of SEVENTY-FIVE per cent (75%) of his regular monthly wages (exclusive of "emergency increase") will be paid to each Licensed Officer from and including the day when the vessel departs from the last port in the Western Hemisphere until and including the day the vessel thereafter arrives at a port in the Western Hemisphere; provided, however, that if after proceeding on such voyage from a U. S. port the vessel calls at only one port in the Western Hemisphere before proceeding on the Trans-Atlantic voyage, the bonus will be paid from and including the day the vessel leaves the United States. (R. 30.)

The two courts below in their incidental interpretation of these sections concluded: (1) that Section 3 did not cover bonuses during internment since the United States was not at war at the time the Agreement was written, and (2) that Section 1 was not applicable since the S. S. CONNECTICUT was sunk *on the way to and not from* a port east of 30 degree West Longitude. It had not "entered" such a port previous to the sinking.

It is difficult to understand the lower courts' interpretation of Section 3. The language is plain. It covers a total loss due to all "hostilities" and "warlike operations," not merely those warlike operations in which countries were then engaged. Indeed, the whole tenor of the Agreement of August 1, 1941, is such that by its terms it comprehends its application to expanded hositilities. And as of August 1, 1941, with the warlike preparations that this country had already made, such as conscription and industrial mobilization, the possibility of our involvement in the war was far from remote. It was present to most minds and can-

not be assumed to have been absent from those of parties such as seamen, their representatives, masters and owners, who perforce were closer to the scene of conflict than the average man.

The second ground of the lower courts' interpretation gives the word "enters" a meaning wholly out of line with the obvious intention of the parties. The peril of a total loss from "hostilities" or "other warlike operations" was as great eastbound over the Atlantic as westbound. To bargain for compensation in challenging the one peril, and not to bargain for such compensation in challenging the same peril, as the Circuit Court of Appeals admitted,[1] made no sense.

Moreover, the proviso of Section 1 specifically negatives the interpretation placed by these courts on that phrase, for the language there refers to "proceeding on such a voyage" and indicates that the payments are due if the voyage has been proceeded upon. "Enters," in other words, plainly means "clears for" rather than the technical concept of entry. Only such an interpretation gives meaning to the contract and it is elementary law that technical constructions of contracts should not destroy an otherwise reasonable and workable interpretation.

Again, the war bonus provided by Section 3(c) is not wholly dependent upon Section 1. Section 1 does [redacted] define its size, but Section 3(c) defines the times when it should be paid, namely, "in the event of total loss of the vessel due to hostilities or warlike operations." In other words, the Agreement provides for a war bonus for certain voyages, but it also provides for a war bonus dependent upon certain happenstances irrespective of the nature of the voyage. This, in fact, is the interpretation given to somewhat similar provisions in a contract of a similar

[1] "Just why such a distinction should have been made does not appear, but this is what the parties seem to have provided in the agreement." Opinions of Circuit Court below (Post, p. 22).

character by the Ninth Circuit Court of Appeals in *Steeves* v. *American Mail Line, Ltd.*, 154 F. (2d) 24. The Court there distinguished between voyage bonuses and internment bonuses.

II. The Subsequent Negotiations Between Collins and Buchanan Cannot Be Interpreted as Abrogating the War Bonus Provisions Set Forth in the Collective Labor Agreement of August 1, 1941.

Three possible conclusions as to the effect of these subsequent negotiations can be arrived at: (1) that the addendum abrogating Article VIII in its entirety was accepted by the Association; (2) that the subsequent negotiations of the parties resulted in embodying Decisions 1 to 5 of the Maritime War Emergency Board into the Agreement of August 1, 1941; (3) that the subsequent negotiations were so inclusive as to be of no effect whatever.

It is submitted that petitioners are entitled to recover under any conclusion save the first. Unfortunately the courts below came to that first conclusion. This petitioners respectfully submit is wrong.

Collective bargaining agreements are admittedly more than mere contracts. Their negotiation is normally attended with considerable formality. Rarely are they the result of a mere exchange of correspondence between subordinates, and even less frequently the result of a mere failure to reply under conditions where a reply might be expected. This is so, because as this Court has recognized, these agreements are in the nature of constitutions governing important rights *inter sese* of a particular community of employers and employees. *J. I. Case & Co.* v. *Nat'l. Labor Relations Board*, 321 U. S. 332, 334-336. See also *Chamberlain, Bargaining and the Concept of Contract*, 48 Col. L. Rev. 829, 844.

The elimination of Article VIII appears as a proposal only in the suggested addendum[3] enclosed in the Company's letter of March 3, 1942. (R. 40). It was at no time referred to as a possibility in the preceding correspondence between the parties on war bonuses. To that proposed addendum there was no action by the Association save the letter of March 4, 1942, signed not by the Association but by "John J. Collins, Adviser," saying: "I will try to see to it that this [the addendum] is signed as soon as possible." To regard this as an acceptance is impossible. It says what it says, namely that there will be a referral of the problem by Collins to the Association for action presumably with his favorable recommendation. In itself it negatives the theory that Collins had power himself to accept such a proposal.

Nor can it be regarded, as the lower court and the Court of Appeals concluded, "only as a convenient written memorandum of a contract or agreement to which the parties considered themselves already bound." (R. 131). This could not be true with regard to the proposal to eliminate Article VIII, which had theretofore so far as the record discloses never before been mentioned by the parties.

The conclusions of the lower courts, if applicable at all to the addendum, can apply only to sections 2 and 3 of that addendum but not to section 1. Section 2 and 3 of the ad-

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[3] The relevant sections of the addendum are again quoted for easy reference purposes:

"1) Article VIII of the agreement of August 1, 1941, is hereby deleted and stricken from said agreement;

2) In the payment of war bonuses and other benefits to the members of the Association, the Company agrees to abide by the decisions heretofore rendered by the Maritime War Emergency Board identified as decisions Nos. 1 to 5 (including Supplement to Decision No. 5), inclusive, and dated December 22, 1941, January 10, 1942, January 20, 1942, January 22, 1942, January 23, 1942, and February 6, 1942, respectively;

3) In the event the Maritime War Emergency Board renders any additional decisions pertaining to war bonuses and other benefits, the Company agrees to give consideration to such decisions in determining whether or not its present policy should be modified."

dendum had been earlier proposed by the Association acting in its own name through Collins in its letter to the Company of February 27, 1942. (R. 174). These, it can be concluded, were accepted by the Company and the addendum may well be a convenient memorandum of that acceptance, but section 1 of the addendum had never been considered by the Association save insofar as Collins' acknowledgment of its receipt and statement of his intention to refer it to his Association.

The error of the two lower courts in this respect derives from their assumption that the acceptance of Section 2 and 3 of the addendum was equivalent to the acceptance of Section 1, *namely, that the agreement of the parties to being governed by Decisions 1 to 5 of the Maritime War Emergency Board automatically involved an abrogation of the war bonus provisions of Article VIII of the Agreement of August 1, 1941.* That such a conclusion does not follow is the substance of petitioners' next point.

Thus, it seems plain that the subsequent negotiations of the parties did not abrogate Article VIII of the Agreement but at the most incorporated into that agreement Decisions 1 to 5 of the Maritime War Emergency Board as they then existed. If they be construed to have had no legal effect — the third conclusion above adverted to — petitioners would be entitled to recover under point 1 heretofore briefed.

III. The Decisions of the Maritime War Emergency Board Board Do Not Derogate From the Rights Given Petitioners to War Bonuses Under Article VIII of the Agreement of August 1, 1941.

To understand the effect of the decisions of the Maritime War Emergency Board it is essential to grasp the place of this Board in the handling of employer-employee relations in the maritime industry. The Board was created by Executive Order on December 19, 1941, pursuant to a

memorial entitled "Statement of Principles" agreed upon the day before by various maritime unions and various employers. (R. 56-59). Its prime purpose was to insure the war effort against interruption by labor difficulties. To that end maritime labor gave up its right to strike for the war period. It and the employers sought the assistance of government to aid them in negotiating agreements covering the difficult problems of war areas, war bonuses and insurance. Neither the operators nor the employees had the necessary knowledge properly to assess the incidence and extent of the risks that had to be run, nor could any agreement if of a static character keep abreast of the varying nature of these risks as the war progressed.

The Maritime War Emergency Board was thus set up to serve three functions. The first was to prescribe the minimal standards that should underlie contracts between the signatories. The second was to vary these standards according to the variations that might occur in the risks. The third was to provide machinery for the settlement of disputes between the signatories.

But the Maritime War Emergency Board's functioning was in no way to impair the right or progress of collective bargaining within the industry. Indeed, it was expressly stated that its actions should not derogate from whatever rights the parties theretofore may have had. Section 3 of the "Statement of Principles" reads in part as follows:

> ". . . It is understood and agreed that all rights guaranteed to labor and industry with respect to collective bargaining will be retained and all agreements and obligations arising as a result of collective bargaining agreements will in no way be violated . . ." (R. 57.)

In short, the decisions of the Maritime War Emergency Board stipulated the minimal requirements of labor agreements but placed no ban upon employees bargaining for more than these. And to interpret a decision, as the lower

courts have done, as having the effect of abrogating a provision in an existing agreement is to fly in the face of the very purposes for which that Board was created.

Thus it was natural for the Association to suggest to the Company, which had not been a signatory to the original "Statement of Principles," that the two of them should be governed by these decisions. But for the Company to suggest to the Association that Article VIII of their agreement should therefore be abrogated was a novel proposition which should not be regarded as having been accepted by the Association in the absence of clear and convincing proof.

The purpose of the Association in getting the Company to accept these decisions extended far beyond the matter of war bonuses. Both parties now would possess a detailed and dynamic memorial of their war risk compensation and war risk insurance rights,[4] to the equitable gradation of bonus rights according to the dangers of the zones that might be traversed,[5] to compensation for the loss of personal effects,[6] to the payment of wages and compensation to dependents,[7] and to many other matters. But to treat acceptance of these decisions as meaning that employees lost rights that they had earlier successfully bargained for, is to misconceive the function and jurisdiction of the Maritime War Emergency Board.

Nowhere is this better illustrated than in the subsequent history of internment bonuses. On March 15, 1943, long after the shipping articles here involved had been entered into, the Maritime War Emergency Board decided finally to put internment bonuses beyond the pale of collective bargaining by the signatories. In its decision of that date and in a decision rendered a year later (See Decision 2A

[4] Decision No. 1, R. 60.
[5] Decision No. 3, R. 88.
[6] Decision No. 4, R. 92.
[7] Decision No. 5, Revised, R. 49.

and 2B, 8 Fed. Reg. 3461, 3462, 9 Fed. Reg. 3521) it made this plain *but it expressly stated that these decisions should operate only prospectively and not retroactively.*

Decision No. 5, Revised (R. 49) can be read and reread without finding anything in it which is a limitation on the right to be paid an internment bonus. Admittedly, it does not require the payment of such a bonus and thus for this reason the Company sought, but without success, to eliminate from its agreement the article—Article VIII—that called for such payments. On the other hand, the decision did not, as the lower courts were led to conclude, prevent the payment of the war bonus provided by the earlier agreement of the parties.

IV. The Action of Petitioners in Receiving Payment and Signing a Receipt Therefor Cannot Be Construed as a Release of Their Rights to War Bonuses for Internment.

Little need be said to establish that no effective release was given the Company by the petitioners. The matter is specifically covered by statutory law which requires the signing of such receipts before a shipping commissioner in order for them to take effect as a release and a discharge of claims. 46 U. S. C. § 644. cf. *Garret* v. *Moore-McCormack Lines*, 317 U. S. 239. This is but a statutory recognition of the ancient doctrine that seamen are wards of the Admiralty.

V. The Ambiguity of the Shipping Articles Is Without Effect.

Whatever interpretation be given the shipping articles does not affect the conclusion. If the reference to war bonuses be regarded as a reference to the decisions of the Maritime War Emergency Board, the reference is similar to that derivable from the subsequent negotiations between the Company and the Association. If the reference be

construed as abrogating the rights given the seamen under Article VIII, Section 3(c), it must of course be stricken down as being an individual contract derogating from rights that the employers had granted these seamen under the collective labor agreement. The law on this is clear. *J. I. Case & Co.* v. *Nat'l Labor Relations Board,* 321 U. S. 332.

CONCLUSION

This case, it will be seen, presents issues of importance to the law as well as to the individuals involved. It involves more than the mere interpretation of a contract. It calls for resolution of what acts can properly be regarded as making modifications in a collective labor agreement, and for a consideration of the legal consequences attaching to decisions of the Maritime War Emergency Board. As such it is believed worthy of the grant by this Court of a writ of certiorari.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

October Term, 1948.

IRA S. MASON ET AL.,

LIBELANTS, APPELLANTS,

v.

THE TEXAS COMPANY,

RESPONDENT, APPELLEE.

Appeal From the District Court of the United States for the District of Massachusetts.

[76 F. Supp. 318.]

BEFORE MAGRUDER, *Chief Judge*, AND GOODRICH AND WOODBURY, *Circuit Judges*.

OPINION OF THE COURT.

January 5, 1949.

MAGRUDER, *Chief Judge*. Appellants Ira S. Mason and Willard M. Carroll, licensed deck officers, were members of an independent union, the Texas Tanker Officers Association (hereinafter called the association), and were em-

ployed on American flag ocean-going vessels of The Texas Company (hereinafter called the company), the appellee herein. On August 1, 1941, the association, appellants' certified collective bargaining representative, and the company concluded a collective bargaining agreement, and on March 30, 1942, appellants signed the shipping articles of the S. S. CONNECTICUT at Port Arthur, Texas, for a voyage to Capetown, South Africa, and return to this country. The S. S. CONNECTICUT was under time charter to the United States acting through the War Shipping Administration.

The vessel departed from Port Arthur on March 31, 1942, and while en route to Capetown was sunk by enemy action on April 23, 1942. Appellants were captured and held on enemy vessels until September 22, 1942, when they were interned on the Japanese mainland. They remained so interned until liberated by American forces on August 15, 1945. Soon thereafter they were repatriated to the United States, arriving in October, 1945.

Separate accounts were stated for the period subsequent to the sinking, and payments were made to appellants pursuant to the relevant Maritime War Emergency Board decisions (referred to further hereinafter). These payments included war bonuses, in addition to basic wages and emergency wage increases, for the periods during which appellants were on enemy vessels and on vessels repatriating them. However, for the period of internment on land, from September 22, 1942, to August 15, 1945, they received basic wages plus emergency increases, but no war bonuses. To recover war bonuses for the period of internment, appellants brought libels *in personam* for $10,600 each in the United States District Court for the District of Massachusetts, and they now prosecute this appeal from findings and a decree adverse to them. 76 F. Supp. 318, 1948 A.M.C. 665 (D.Mass.1948).

Appellants rest their claims upon the provisions of the aforementioned collective bargaining agreement, and for the time being we assume, without deciding, that this agreement is in fact controlling. The pertinent portions of the agreement on the subject of a war bonus are in Article VIII:

"1. TRANS-ATLANTIC:

On each Trans-Atlantic voyage on which a vessel enters a port east of 30 degrees West Longitude, war bonus at the rate of SEVENTY-FIVE percent (75%) of his regular monthly wages (exclusive of 'emergency increase') will be paid to each Licensed Officer from and including the day when the vessel departs from the last port in the Western Hemisphere until and including the day the vessel thereafter arrives at a port in the Western Hemisphere; provided, however, that if after proceeding on such voyage from a U. S. port the vessel calls at only one port in the Western Hemisphere before proceeding on the Trans-Atlantic voyage, the bonus will be paid from and including the day the vessel leaves the United States."

"3. GENERAL PROVISIONS: . . . .

(c) In the event of a total loss of the vessel due to hostilities or warlike operations, all licensed officers will be furnished transportation to a United States port and paid their full wages and war bonus until and including the day of arrival at such port.

(d) Nothing in this Agreement shall prevent changes in this Section by mutual agreement of the ASSOCIATION and the COMPANY."

The purport of paragraph 1 is that the bonus provision becomes operative only after the vessel has entered a port east of 30° West Longitude (and then the amount of the bonus is computed retroactively). In the present case the S. S. CONNECTICUT was destroyed before having entered a port so situated. Subparagraph 3(c) makes no mention of the amount of the bonus, and hence we think it clear that a reference back to paragraph 1 must have been intended. We find no indication that the reference back was meant

to be limited to the amount of the bonus and was not meant to encompass the condition precedent for qualification for the bonus. Hence, even if we accept the argument that the coverage of subparagraph 3(c) extends to periods of internment, appellants have not met the condition precedent for qualification for the bonus set forth in paragraph 1. This construction reads subparagraph 3(c) as distinguishing between destruction immediately prior to an entry into a port east of 30° West Longitude and destruction immediately after departure from such a port. Just why such a distinction should have been made does not appear, but this is what the parties seem to have provided in the agreement.

Although we have proceeded above on the assumption that subparagraph 3(c) was intended to cover periods of internment by an enemy, we are convinced that the contrary is the case. When the collective bargaining agreement was written the United States was not at war, and its seamen were not being interned. The language of the agreement affords little basis for a conclusion that the parties contemplated that the United States would soon become a belligerent or anything more than that the company would fulfill the obligations of subparagraph 3(c) toward captured officers being repatriated in accordance with the usual treatment given seamen of neutral nations.[1] Furthermore, subparagraph 3(c) makes no mention of "internment", whereas in another case where it was intended that war bonus should be paid for periods of internment, the parties there involved made specific men tion of that fact in a rider to shipping articles signed prior to our entry into the war. *Steeves* v. *American Mail Line, Ltd.*, 154 F.2d 24 (C.C.A. 9th, 1946); *cf. Agnew* v. *Ameri-*

[1] Subparagraph 3(d) of Article VIII indicates that the parties felt they might wish to change the bonus provisions of the agreement. If they considered our involvement in war at all imminent, one of the reasons for inserting this subparagraph was doubtless to provide a means for meeting that contingency by modification of an agreement which in its original form did not do so.

can President Lines, Ltd., 73 F. Supp. 944 (D.C.N.D.Cal. 1947).

We have dealt with the case thus far on the supposition that the collective bargaining agreement of August 1, 1941, governs, but we find ourselves in agreement with the district judge's conclusion that the bonus provisions of Article VIII were superseded before the signing of the shipping articles on March 30, 1942. The events upon which this conclusion is based received their impetus from a meeting between representatives of shipping operators and maritime unions shortly after the attack on Pearl Harbor. They agreed to establish the Maritime War Emergency Board to provide voluntary machinery in the maritime industry "for the settlement of disputes without interruption of service or stoppage of work during the period of the war". The Statement of Principles setting up the new Board also stated: "In so far as areas, war bonuses, and insurance are concerned, it is regarded as desirable and necessary that a uniform basis for each item covering the entire nation and the entire industry be reached." It was pointed out that neither the operators nor the Unions felt that they would at all times be in a position to "obtain adequate information with regard to the extent of war risks in order to enable them to bargain intelligently". The Statement of Principles was signed for "Independent Unions of Licensed Officers on Tankers" by one John J. Collins, evidently the same man who signed the collective bargaining agreement of August 1, 1941, as J. J. Collins, Advisor, Texas Tanker Officers Association. The company was not a signatory to the Statement of Principles.

Soon after its inception the Emergency Board began to issue decisions on war risk compensation matters, and on February 27, 1942, Collins, on behalf of the association, wrote to the company asking whether it would abide by the decisions already issued by the Board. Collins stated that the association, as a signer of the Statement of Prin-

ciples, had agreed to be bound by the Board's decisions. The company replied on March 3, 1942, and stated that by means of the document enclosed "we have signified our willingness to abide by and, in fact, are already abiding by the decisions and clarifications heretofore issued by the Maritime War Emergency Board". The document enenclosed by the company was a signed addendum (in duplicate) to the collective bargaining agreement, announcing that Article VIII was stricken and specifying those Emergency Board decisions which were to govern war risk payments. Receipt of the letter and addendum was acknowledged by Collins in a letter dated March 4, 1942: "I will try to see to it that this is signed as soon as possible." Although the addendum was never signed on behalf of the association, on the basis of the above and other evidence we agree with the district judge that it was regarded "only as a convenient written memorandum of a contract or agreement to which the parties considered themselves already bound."

The correspondence between the company and the association may be somewhat unclear as to exactly which Emergency Board decisions the parties had reached agreement on. The only reference to a war bonus in the S. S. CONNECTICUT shipping articles, signed by appellants on March 30, 1942, is in these words: "A WAR BONUS PAYABLE ON THIS VOYAGE IN ACCORDANCE WITH U. S. MARITIME COMMISSION DECISIONS". The district judge found that the United States Maritime Commission did not issue any decisions relating to war bonuses. Hence, he decided that the quoted provision of the articles, when read in the light of the negotiations between company and association after Pearl Harbor, indicated that the reference was meant to be to Maritime War Emergency Board decisions, and that those Emergency Board decisions issued up to the date of the signing of the articles governed appellants' rights to a war bonus during internment. With this we agree.

We have scrutinized the Emergency Board decisions carefully, and we are convinced, as was the district judge, that they do not provide for the payment of a war bonus for periods of internment on land by the enemy. Decision No. 2 of January 10, 1942, revised on February 24, 1942, is replete with expressions clearly indicating that a bonus was payable only for the time of actual *voyage* in certain specified waters. The same is true of Decision No. 7, effective March 21, 1942, amended March 30, 1942, which superseded Decision No. 2 and Decision No. 2 Revised. Decision No. 5 of January 23, 1942, revised on February 21, 1942, purports to deal specifically with payments to seamen interned as a result of enemy action. Articles 1 and 2 state that internment payments shall consist of "basic wages and emergency wages", and Article 6 of Decision No. 5 Revised underscores this limitation on payments during internment. In *Montoya* v. *Tide Water Associated Oil Co.*, 1948 A.M.C. 1246 (D.C.S.D.N.Y.), the Emergency Board decisions in effect February 24, 1942, were held to preclude the payment of a war bonus while seamen were interned on land.[2]

Since we have found no basis for upholding appellants' claims in the original collective bargaining agreement, in the modification thereof, or in the shipping articles properly construed, *cf. Agnew* v. *American President Lines, Ltd.*, *supra*, it is unnecessary to pass on the relative paramountcy of the collective bargaining agreement of August 1, 1941, and the reference to a war bonus in the shipping articles.

The decree of the District Court is affirmed.

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[2] Although our conclusion is based on decisions issued up to March 30, 1942, it would have been the same even if we had confined our attention only to those decisions issued prior to one of the conceivably pertinent earlier dates.